

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

LINDA A. CLARK  
1600 Olivewood Ave.  
Lakewood, OH 44107

:  
: Case No.

JOHN WHITEMAN  
1943 Drew Avenue  
Columbus, OH 43235

:  
: Judge

MICHAEL C. RYSH  
2551 Marda Drive  
Parma, OH 44134

: Magistrate Judge

DOROTHY L. RYSH  
2551 Marda Drive  
Parma, OH 44134

LAURA YEAGER  
6748 Canterbury Road  
Madison, OH 44057

: **NOTICE OF REMOVAL**

And

MICHAEL YEAGER  
6748 Canterbury Road  
Madison, OH 44057

: Upon Removal From  
: The Court Of Common Pleas  
: Cuyahoga County, Ohio  
: Case No. CV-12-787639

Plaintiffs,

v.

LENDER PROCESSING SERVICES, INC.  
601 Riverside Avenue  
Jacksonville, FL 32204

LPS DEFAULT SOLUTIONS  
601 Riverside Avenue  
Jacksonville, FL 32204

DOCX, LLC  
601 Riverside Avenue  
Jacksonville, FL 32204

LERNER, SAMPSON & ROTHFUSS  
Terminal Tower  
50 Public Square – Ste. 620  
Cleveland, Ohio 44113-2201

REIMER, ARNOVITZ, CHERNEK &  
JEFFREY CO., L.P.A.  
2450 Edison Blvd.  
Twinsburg, OH 44087

And

MANLEY DEAS KOCHALSKI LLC  
55 Public Sq. Ste. 1828  
Cleveland, OH 44113

Defendants.

**PLEASE TAKE NOTICE** that Defendant Lender Processing Services, Inc. (“LPS”), by and through its counsel files its Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1453 and based upon 28 U.S.C. §§ 1332 et seq., and more specifically the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), and for the reasons stated herein removes this case, styled *Clark v. Lender Processing Services, Inc.* (the “Action”), to the United States District Court, Northern District of Ohio, Eastern Division.

## **I. INTRODUCTION**

(1) On or about July 23, 2012, Linda A. Clark, Jeff Doehner, Julie Doehner, Nina Lowery, John Whiteman, Laura Yeager, and Michael Yeager, as individuals and on behalf of a putative class of similarly situated persons, filed their initial Class Action Complaint seeking recovery under the Ohio Consumer Sales Practices Act, among other claims, in the Court of Common Pleas, Cuyahoga County, Ohio. Plaintiffs brought claims against: LPS; LPS Default Solutions, Inc.; DocX, LLC; Fidelity National Information Services, Inc.; American Home Mortgage Servicing, Inc.; Lerner, Sampson & Rothfuss; Reimer, Arnovitz, Chernenek & Jeffrey

Co., L.P.A.; and Manley Deas Kochalski LLC.

(2) On August 23, 2012, Plaintiffs Clark, Whiteman, and the Yeagers filed a First Amended Class Action Complaint For Violations Of The Ohio Consumer Sales Practices Act And Injunctive Relief, adding Plaintiffs Michael C. Rysh and Dorothy L. Rysh (altogether, "Plaintiffs"). The First Amended Complaint removed Jeff and Julie Doehner, and Nina Lowery as Plaintiffs in this Action. The First Amended Complaint also removed Fidelity National Information Services, Inc. and American Home Mortgage Servicing, Inc. as Defendants in this Action.

(3) Removal of this Action is timely under 28 U.S.C. § 1446(b) because LPS was served with the initial Complaint on July 30, 2012, and this Notice is filed within thirty days of service of the initial Complaint. LPS specifically reserves all defenses, including but not limited to improper or lack of service, lack of personal jurisdiction, and failure to join necessary or indispensable parties.<sup>1</sup>

(4) Copies of all state court filings currently made available by the Cuyahoga County Clerk of Courts, including the initial Complaint and its attached Exhibits, are attached hereto as Exhibit A.

(5) As of the time of this filing, LPS has not received a service copy of the First Amended Complaint and attached exhibits. Nor is the First Amended Complaint and attached exhibits currently available in the Cuyahoga County Clerk of Courts. LPS will promptly supplement this Notice of Removal with a complete copy of the First Amended Complaint and attached exhibits as soon as a service copy is received, or such copy is made available by the Cuyahoga County Clerk of Courts.

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<sup>1</sup> Upon information and belief, LPS specifically notes that Defendant Manley Deas Kochalski LLC has not yet received service of process of the summons, the initial Complaint, or the First Amended Complaint.

(6) A civil action filed in state court may be removed to federal district court if the district court has “original jurisdiction” over the matter. 28 U.S.C. § 1441(a). Under CAFA:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which—(A) any member of a class of plaintiffs is a citizen of a State different from any defendant; (B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or (C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

28 U.S.C. § 1332(d)(2), *see also Mell v. Anthem, Inc.*, --- F.3d ---, 2012 WL 3023537, \*9 n.3 (6th Cir. 2012).

(7) Removal is proper in the instant case based upon CAFA, and, in particular, 28 U.S.C. § 1332(d), and pursuant to 28 U.S.C. §§ 1441(a) and 1453, as the prerequisites for removal are satisfied here: (a) Plaintiffs’ putative class as proposed in the Complaint exceeds 100 members; (b) there is minimal diversity between Plaintiffs and Defendants, as LPS is a Delaware corporation having a principal place of business in Florida, as defined in CAFA, and the local controversy exception does not apply; and (c) the purported claims of the individual class members, based upon the allegations in the Complaint, exceed \$5,000,000. Accordingly, removal is proper.

## **II. THE ALLEGED CLASS EXCEEDS 100**

(8) The Complaint defines the putative class as “All Ohio citizens who were (a) defendants in judicial foreclosure actions on first lien mortgages on their homes that were purportedly held by securitization trusts, and that were knowingly initiated and prosecuted by Defendants on behalf of parties that lacked legal standing to do so, and (b) who were damaged by Defendants’ abusive foreclosure practices ... .” (Compl. ¶ 1; First Am. Compl. ¶ 1.)

(9) According to Plaintiffs, the putative class consists of two sub-classes, an

injunctive relief sub-class and a monetary relief sub-class, each of which Plaintiffs allege “encompasses many hundreds and perhaps thousands of individuals.” (Compl. ¶¶ 259, 268; First Am. Compl. ¶¶ 241, 250). Accordingly, there is no question that the allegations of the Complaint denote a class that is in excess of 100 members. *See* 28 U.S.C. § 1332(d)(5) (noting plaintiff class must exceed 100).

### **III. MINIMAL DIVERSITY EXISTS**

(10) The class representatives are all, according to the Complaint, citizens of Ohio. (Compl. ¶¶ 20-24; First Am. Compl. ¶¶ 20-23.) Plaintiffs, in their Complaint, also allege that Defendant LPS is a Delaware corporation with its principal place of business in Florida. (Compl. ¶ 25; First Am. Compl. ¶ 24.). Furthermore LPS Default Solutions, Inc. is a Delaware corporation with its principal place of business in Minnesota. Consequently, minimal diversity exists for purposes of CAFA. *See* 28 U.S.C. § 1332(d)(2).

(11) Furthermore, neither the local controversy exception nor the home-state exception under CAFA applies as, during the three year period preceding the filing of the Complaint, several class actions were filed asserting the same or similar factual allegations against LPS or one or more of the co-defendants on behalf of other persons. *See* 28 U.S.C. §§ 1332(d)(3) and (4). In addition, the law firm defendants are not parties from whom significant relief is sought by the purported class and are not defendants whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class. *See* 28 U.S.C. § 1332(d)(4)(A)(i).

### **IV. THE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION**

(12) In determining the amount in controversy, the plaintiff is the “master of his complaint.” *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 409 (6th Cir. 2007). Thus, courts first look to the complaint. “[U]nless the law gives a different rule, the sum claimed

by the plaintiff controls.” *St. Paul Mercury Indem. Co. v Red Cab Co.*, 303 U.S. 283, 290 (1938).

(13) In the instant case, Plaintiffs allege that the amount in controversy “exceeds \$5 million.” (Compl. ¶ 269; First Am. Compl. ¶ 251). LPS need only demonstrate that based on the allegations in the Complaint that the purported damages might exceed \$5 million. LPS has met that burden and therefore removes this case to federal court.

**V. THE CONSENT OF OTHER DEFENDANTS IS NOT REQUIRED**

(14) CAFA provides that a defendant may remove an action without obtaining the consent of the other defendants in the action. *See* 28 U.S.C. § 1453(b); *Capital One Bank (USA) N.A. v. Jones*, 710 F. Supp. 2d 630, 633 (N.D. Ohio 2010); *Westwood Apex v. Contreras*, 644 F.3d 799, 801 (9<sup>th</sup> Cir. 2011); *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 56 (2d Cir. 2006). Thus, LPS is not required to obtain the consent of its co-defendants in this matter prior to removal.

**VI. CERTIFICATION UNDER FEDERAL RULES OF CIVIL PROCEDURE**

(15) This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, this Action, pending in the Court of Common Pleas Court for Cuyahoga County, Ohio, is properly removed to this Court by Lender Processing Services, Inc. pursuant to 28 U.S.C. §§ 1441 & 1453, and 28 U.S.C. §§ 1332(d).

Respectfully submitted,

/s/ Jonathon W. Groza

John P. Gilligan (0024542)

Alan G. Starkoff (0003286)

Albert G. Lin (0076888)

ICE MILLER, LLP

250 West Street

Columbus, Ohio 43215

Tel: (614) 462-2221

Fax: (614) 222-3438

Email: [john.gilligan@icemiller.com](mailto:john.gilligan@icemiller.com)

[alan.starkoff@icemiller.com](mailto:alan.starkoff@icemiller.com)

[albert.lin@icemiller.com](mailto:albert.lin@icemiller.com)

Jonathon W. Groza (0083935)

ICE MILLER, LLP

Fifth Third Center

600 Superior Avenue East

Suite 1701

Cleveland, OH 44114

Tel: (216) 394-5084

Fax: (216) 394-5094

Email: [jonathon.groza@icemiller.com](mailto:jonathon.groza@icemiller.com)

*Counsel for Defendants Lender Processing  
Services, Inc., LPS Default Solutions, Inc.,  
& DocX LLC*

OF COUNSEL:

Mitchell W. Berger (*pro hac vice* application to be submitted)

Fred O. Goldberg (*pro hac vice* application to be submitted)

Michel O. Weisz (*pro hac vice* application to be submitted)

BERGER SINGERMAN

1450 Brickell Avenue, Ste. 1900

Miami, FL 33131

Tel: (305) 714-4381

Fax: (305) 714-4340

Email: [FGoldberg@bergersingerman.com](mailto:FGoldberg@bergersingerman.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 27, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system. In addition, a copy of the foregoing was also served by regular U.S.

Mail upon:

**ATTORNEYS FOR PLAINTIFFS**

Steven S. Kaufman (Ohio Bar No. 0016662)  
Kaufman & Company, LLC  
1001 Lakeside Avenue, Suite 1710  
Cleveland, OH 44114  
Tel: (216) 912-5500  
Fax: (216) 912-5501  
Email: [steve.kaufman@kaufman-company.com](mailto:steve.kaufman@kaufman-company.com)

Of Counsel:  
Sherrie R. Savett  
Daniel Berger  
Lawrence J. Lederer  
Eric Lechtzin  
1622 Locust Street  
Philadelphia, PA 19103  
Tel: (215) 875-3000  
Fax: (215) 875-4604  
Email: [ssavett@bm.net](mailto:ssavett@bm.net)  
Email: [danberger@bm.net](mailto:danberger@bm.net)  
Email: [lleder@bm.net](mailto:lleder@bm.net)  
Email: [elechtzin@bm.net](mailto:elechtzin@bm.net)

Mark N. Zanides  
The Law Office of Mark N. Zanides  
30251 Golden Lantern, Suite E-102  
Laguna Niguel, CA 92677  
Tel: (949) 545-6526  
Fax: (888) 422-8816  
Email: [mzanides@mnzlaw.com](mailto:mzanides@mnzlaw.com)



Jonathan Shapiro  
Stern Shapiro Weissberg & Garin LLP  
90 Canal Street  
Boston, MA 02114-2022  
Tel: (617) 742-5800  
Fax: (617) 742-5858  
Email: [jshapiro@sswg.com](mailto:jshapiro@sswg.com)

Marc E. Dann (Ohio Bar No. 0039425)  
Grace M. Doberdruk (Ohio Bar No. 0085547)  
Dann, Doberdruk & Wellen, LLC  
4600 Prospect Avenue  
Cleveland, OH 44103  
Tel: (216) 373-0539  
Fax: (216) 373-0536  
Email: [mdann@dannlaw.com](mailto:mdann@dannlaw.com)  
Email: [grace@dannlaw.com](mailto:grace@dannlaw.com)

James R. Douglass (Ohio Bar No. 0022085)  
James R. Douglass Co. LPA  
20521 Chagrin Blvd., Suite D  
Shaker Heights, OH 44122  
Tel: (216) 991-7640  
Fax: (216) 991-7641  
Email: [firedcoach@aol.com](mailto:firedcoach@aol.com)

**ATTORNEYS FOR DEFENDANTS**

**Lerner, Sampson & Rothfuss**

Rich David Deblasis  
Lerner Sampson & Rothfuss  
120 East Fourth Street, Ste. 800  
Cincinnati, Ohio 45202  
Tel: (513) 412-6614  
Email: [Rick.DeBlasis@lsrlaw.com](mailto:Rick.DeBlasis@lsrlaw.com)

**Reimer, Arnovitz, Cherek & Jeffrey Co., LPA**

Brent S. Silverman  
James O'Connor  
101 West Prospect Avenue, Ste. 1400  
Cleveland, Ohio 44115  
Tel: (216) 430-0244  
Fax: (216) 687-1841

Email: [BSilverman@reminger.com](mailto:BSilverman@reminger.com)

Email: [JOConnor@reminger.com](mailto:JOConnor@reminger.com)

**Manley Deas Kochalski LLC**

Rodger Eckelberry  
Baker Hostetler  
Capitol Square, Suite 2100  
65 East State Street  
Columbus, Ohio 43215-2620  
Tel: 614.462.5189  
Fax: 614.462.2616  
Email: [reckelberry@bakerlaw.com](mailto:reckelberry@bakerlaw.com)

/s/ Jonathan W. Groza

*An Attorney for Defendants Lender Processing  
Services, Inc., LPS Default Solutions, Inc., & DocX  
LLC*